METROBUS NATIONWIDE SDN BHD

v.

LEMBAGA PELESENAN KENDERAAN SEMENANJUNG MALAYSIA & ANOR

HIGH COURT MALAYA, KUALA LUMPUR
FAIZA TAMBY CHIK J
[ORIGINATING SUMMONS NO: R2-25-53-2000]
30 NOVEMBER 2000

ADMINISTRATIVE LAW: *Remedies - Certiorari - Certiorari to quash decision of Licencing Board - Time frame to file application - Order 53 r. 1A RHC 1980 - Whether must file within six weeks of decision - Whether O. 53 r. 1A not applicable to administrative decisions - Enlargement of time - Whether no prejudice if court were to extend time - Rules of High Court 1980, O. 53 r. 1A - Courts of Judicature Act 1964, s. 25, para 1 of Schedule*

STATUTORY INTERPRETATION: *Construction of statute - Literal approach - Purposive approach - Certiorari and mandamus - Application to quash decision of Licencing Board - Filing of application - Whether bound by six-week time frame in O. 53 r. 1A RHC 1980 - Literal interpretation of O. 53 r. 1A - Effect - Whether Order inapplicable to administrative decisions - Whether only applicable to court proceedings - Rules of High Court 1980, O. 53 r. 1A - Rules of High Court (Amendment) 2000, O. 53 rr. 1(1), 3(6) - Rules of Supreme Court (UK), O. 53 rr. 1(1), 4(1), 4(2) - Courts of Judicature Act 1964, s. 25, para 1 of Schedule - Interpretation Acts 1948 & 1967, s. 54(2)*

STATUTORY INTERPRETATION: *Canon of construction - Ejusdem generis principle - Application for order of certiorari and mandamus - Order 53 r. 1A RHC 1980 - Whether O. 53 r. 1A applicable to administrative decisions - Phrase "judgment, order conviction and other proceedings" therein - Interpretation - Whether to apply ejusdem generis rule - Meaning of "other proceedings" - Whether referred only to "court proceedings" - Administrative decisions - Whether falling outside scope of "proceedings" - Rules of High Court 1980, O. 53 r. 1A - Rules of High Court (Amendment) 2000, O. 53 rr. 1(1), 3(6) - Rules of the Supreme Court (UK), O. 53 rr. 1(1), 4(1), 4(2) - Courts of Judicature Act 1964, s. 25, para 1 of Schedule - Interpretation Acts 1948 & 1967, s. 54(2)*

WORDS & PHRASES: *"Other proceedings" - Order 53 r. 1A Rules of High Court 1980 - Whether referring only to court proceedings*

By a decision dated 27 January 2000 ('the first decision') the first respondent revoked the licence of the applicant's bus no. BDW 8414 ('the bus'). The applicant appealed but the appeal was rejected by the Minister *vide* a letter dated 14 April 2000 ('the second decision'). On 2 June 2000, the applicant applied for leave ('the application') for *certiorari* to issue to quash the first decision and the second decision, as well as for *mandamus* to direct the first respondent to withdraw the revocation of the licence of the bus. This apart, the applicant also sought relief under s. 25 read with para. 1 of the Schedule to the Courts of Judicature Act 1964 ('the CJA'). On 23 August 2000, however, the respondents raised a preliminary objection that the application was filed out of time, and had thus contravened O. 53 r. 1A Rules of the High Court 1980 ('RHC').

It was not in dispute that O. 53 r. 1A RHC *inter alia* stipulates that "leave shall no be granted to apply for an order of *certiorari* to remove any judgment, order, conviction or other proceedings for the purpose of its being quashed, unless the application for leave is made within six-weeks after the date of the proceeding …". It was also not in dispute that the application here was filed exactly six-weeks from the date the applicant received the second decision, but seven-weeks from the date of the second decision. In the premises, before the learned judge herein, the applicant contended that the objection ought to be dismissed as O. 53 r. 1A RHC, properly interpreted, did not apply to the facts of the application, and failing that, applied orally for enlargement of time for the application. The questions that arose were: (i) whether, upon the proper interpretation of the words "other proceedings" in O. 53 r. 1A RHC, the order could be said to apply to an application to quash an administrative decision; and (ii) whether the court ought to exercise its discretion and enlarge time to enable the applicant to file the application.

Held:

[1] A literal and *ejusdem generis* construction of O. 53 r. 1A RHC shows that the order only applies to "*certiorari* to remove any judgment, order, conviction or other proceedings" whilst a purposive interpretation supports the construction that the six-week time period should run from the date of the applicant's receipt of the second decision and not from the date of the second decision. (p 422 c-d)

[2] The phrase "other proceedings" in O. 53 r. 1A RHC should be interpreted by referring to the *ejusdem generis* rule of interpretation. This is because the preceding words "judgment, order, conviction" in the order specifically refer to a category of court orders which are final in effect. (p 422 h)

[2a] Applying the *ejusdem generis* rule of construction, the phrase "other proceedings" in O. 53 r. 1A RHC must mean court proceedings which are final in effect and not administrative decisions. That the term "proceedings" refers to "court proceedings" and not administrative proceedings or administrative decisions is well supported by authorities. Accordingly, O. 53 r. 1A RHC does not apply to the first and second decisions in this case which do not concern court proceedings. (p 425 b)

[3] If the Rules Committee has indeed intended that O. 53 r. 1A RHC applies to administrative decisions, the Rules Committee would have clearly and expressly used the term "decisions" in that order, just as it has done in O. 56 r. 1(1) RHC. In this respect, the amendment to O. 53 RHC by the Rules of the High Court (Amendment) 2000, though not applicable to the present application, is significant. The new O. 56 r. 3(6) clearly uses the word "decision". The new O. 53 r. 3(6) RHC thus shows that, if the Rules Committee had intended that the previous O. 53 r. 1A RHC would apply to administrative decisions, the Rules Committee could have easily and expressly provided as such. (p 426 e-f)

[4] Order 53 RHC does not prescribe a time limit to make an application for *certiorari* to quash administrative decisions. Nor does the order provide a time period to file applications for *mandamus* or relief pursuant to para. 1 of the Schedule to the CJA. As such s. 54 (2) of the Interpretation Acts 1948 & 1967 applies in this case, in that, "where no time limit is prescribed within which anything shall be done, that thing shall be done with all convenient speed". On the facts, the application here was filed with all convenient speed. (p 429 b-d)

[5] To prevent injustice, O. 53 r. 1A RHC should be given a purposive interpretation as well. This would mean that the six-week time period commenced from the date the applicant received the second decision and hence the application was made within the time stipulated in O. 53 r. 1A RHC. (p 432 h-i)

[5a] In any case, the absence of any requirement of a formal application in O. 53 r. 1A RHC means that this court's discretion to extend time is not fettered by the lack of a formal application. On the facts, a strong case has been established to warrant this court to enlarge the time in respect of the application. (p 434 b)

[Preliminary objection dismissed. Order in terms of application.]

Case(s) referred to:

Bolton Finance Bhd v. Kenneth James Sanker [1997] 4 CLJ Supp 99 ***(refd)***
Boustead Trading (1985) Sdn Bhd v. Arab-Malaysian Merchant Bank Bhd [1995] 4 CLJ 283 ***(refd)***
Commissioner of Income Tax v. Shahzada Nand & Sons [1966] SC 1342 ***(refd)***
Dato' Hj Abdul Malik v. Registrar of Societies, Malaysia [1989] 1 MLJ 67 ***(dist)***
Dato' Jaffar Mohd Ali & Anor v. Jasatera Berhad & Ors [2000] 2 CLJ 689 ***(refd)***
Griffiths v. Secretary of State for the Environment [1983] 1 All ER 439 ***(dist)***
Herbert Berry Associates Ltd v. Inland Revenue Commissioners [1977] 1 WLR 1437 ***(refd)***
Lim Eng Kay v. Jaafar Mohamed Said [1982] 2 LJ 156 ***(refd)***
Lim Phin Khian v. Kho Su Ming [1996] 1 MLJ 1 ***(foll)***
Luggage Distributors (M) Sdn Bhd v. Tan Hoe Teng [1995] 3 CLJ 520 ***(refd)***
Maleb Su v. PP; Cheak Yoke Thong v. PP [1984] 1 CLJ 378; [1984] 2 CLJ (Rep) 232 ***(foll)***
Mersing Omnibus Co Sdn Bhd v. Minister of Labour and Manpower [1983] 2 CLJ 7; [1983] CLJ (Rep) 266 ***(not foll)***
PP v. Pengurus Hong Trading & Co [1985] 1 MLJ 366 ***(foll)***
PP v. Chew Siew Luan [1982] CLJ 354; [1982] CLJ (Rep) 285 ***(refd)***
R Rama Chandran v. The Industrial Court of Malaysia [1997] 1 CLJ 147 ***(foll)***
Ravindran v. Malaysian Examinations Council [1984] 1 CLJ 232; [1984] 1 CLJ (Rep) 320 ***(dist)***
Soon Kong Meng & Anor v. Lee Thye & Ors [1995] 4 CLJ 547 ***(refd)***
Tan Tek Seng v. Suruhanjaya Perkhidmatan Pendidikan & Anor [1996] 2 CLJ 771 ***(refd)***

Legislation referred to:

Commercial Vehicles Licensing Board Act 1987, ss. 25(1), 265(2)
Courts of Judicature Act 1964, s. 25, sch para 1
Interpretation Acts 1948 and 1967, ss. 2(1)(e), 54(2)
Rules of the High Court 1980, O. 3 r. 5, O. 53 rr. 1(1), 1A, 3(6), O. 56 r. 1(1)
Rules of the Supreme Court 1980, O. 53 r. 4(1)

Rules of the Supreme Court [UK], O. 53 rr. 1(1), 4(1), (2)
Town and Country Planning Act 1971 [UK], s. 245(1)

Other source(s) referred to:

The Law Lexicon with Legal Maxims, 1993, pp 1022-1023

For the applicant - Wong Kian Kheong (Anita Ibrahim); M/s Lee Hishammuddin
For the respondent - Ahmad Kamal Mohd Shahid; AG's Chambers

Reported by WA Sharif

JUDGMENT

Faiza Tamby Chik J:

The applicant has filed an application to the court by way of notice of motion (encl. (1)) praying among others, for leave for the following relief:

(a) two orders of *certiorari* to quash the decision of the first respondent contained in a letter dated 27 January 2000 ("first decision") which revoked the license of the applicant's bus bearing the registration number BDW 8414 ("bus") and the decision of the second respondent contained in a letter dated 14 April 2000 ("second decision") which dismissed the applicant's appeal against the first decision;

(b) an order of *mandamus* directing the first respondent to withdraw the revocation of the license of the bus; and

(c) any order or relief under s. 25 read with para. 1 of the schedule to the Courts of Judicature Act 1964.

On 23 August 2000 the learned Senior Federal counsel from the Attorney General's Chambers has raised a preliminary objection against this application on the ground that this application has been filed out of time ("preliminary objection"). The applicant relied on the following facts to oppose the preliminary objection:

(i) the first respondent granted a license for the bus for the period from 1 October 1993 until 30 September 1998 – exh. "A22", pp. 98-99 of the applicant's affidavit (court encl. No. 3);

(ii) the applicant applied to the first respondent by way of a letter dated 23 April 1998 for a confirmation of all its bus schedules and routes – para. 23, p. 12, and exh. "A19", p. 88 of the applicant's affidavit (court encl. No. 3);

(iii) in a meeting held on 25 May 1998 by the deputy minister of entrepreneur development and attended by the applicant's representatives, it was announced that the Government's decision that the *status quo* of all bus operator companies in the Klang Valley would be maintained for at least one year ("Government's decision") – para. 24, p. 12, and exh. A20, pp. 89-92 of the applicant's affidavit (court encl. No. 3);

(iv) the first respondent renewed the license of the bus for the period from 1 October 1998 until 30 September 1999 – para. 26, p. 13, and exh. "A22", p. 97 of the applicant's affidavit (court encl. No. 3);

(v) the first respondent gave a notice dated 7 April 1999 to the applicant to show cause why the license for the bus should not be suspended or revoked under s. 265(2) of the Commercial Vehicles Licensing Board Act 1987 ("CVLBA") on the allegation that the bus had operated on an unauthorised route ("notice to show cause") – para. 27, pp. 13-14 and exh. "A23", p. 100 of the applicant's affidavit (court encl. No. 3);

(vi) the applicant by way of a letter dated 19 April 1999 to the first respondent stated that the first applicant would like to make written representations to answer the notice to show cause and the applicant also explained that the bus did not operate on an unauthorised route – para. 28, pp. 14-15 and exh. "A24", p. 101 of the applicant's affidavit (court encl. No. 3);

(vii) the applicant applied to the first respondent by way of letter dated 17 May 1999 to renew the licenses of 42 buses including the bus ("renewal application") – para. 29, p. 15, and exh. "A25", pp. 102-104 of the applicant's affidavit (court encl. No. 3);

(viii) the first respondent by way of a letter to the applicant dated 6 October 1999 rejected the renewal application without giving reasons ("rejection of renewal application") – para. 31, p. 16, and exh. "A27", pp. 107-109 of the applicant's affidavit (court encl. No. 3);

(ix) the applicant appealed against the rejection of renewal application by way of a letter dated 8 October 1999 ("applicant's appeal") – para. 32, p. 26, and exh. "A28", pp. 110-116 of the applicant's affidavit (court encl. No. 3);

(x) the second respondent allowed the applicant's appeal and renewed the licenses of 42 of the applicant's buses, including the bus, for a period of three years but suspended the licenses of four of the applicant's buses, including the bus, for a period of three months ("suspension of the bus' license") – para. 33, pp. 16-17, and exh. "A29", pp. 117-120 of the applicant's affidavit (court encl. No. 3);

(xi) the first respondent renewed the license of the bus for the period from 26 October 1999 until 25 October 2002 – para. 35, pp. 17-18, and exh. "A31", p. 123 of the applicant's affidavit (court encl. No. 3);

(xii) the first respondent decided in its meeting on 23 December 1999 to revoke the licence of the bus and this was conveyed to the applicant by way of a letter dated 27 January 2000 ("first decision") – para. 36, p. 18, and exh. "A32", pp. 127-128 of the applicant's affidavit (court encl. No. 3);

(xiii) the applicant appealed against the first decision and the second respondent purportedly rejected the appeal ("second decision") in a letter to the applicant dated 14 April 2000. The second decision was only received by the applicant on 21 April 2000 – paras. 40-41, p. 20, and exh. "A34", p. 131 of the applicant's affidavit (court encl. No. 3); and

(xiv) this application was filed on 2 June 2000 which was exactly six weeks from the date of the applicant's receipt of the second decision but was seven weeks from the date of the second decision.

The preliminary objection is based on the ground that this application has been filed out of the six-week period as stipulated in O. 53 r. 1A of the Rules of the High Court 1980 ("RHC") from the date of the second decision. According to the letter from the learned senior federal counsel dated 25 July 2000, the preliminary objection is supposedly based on the following decisions: the Federal Court's decisions in *Mersing Omnibus Co Sdn Bhd v. Minister of Labour and Manpower* [1983] 2 CLJ 7; [1983] CLJ (Rep) 266 and *Ravindran v. Malaysian Examinations Council* [1984] 1 CLJ 232; [1984] 1 CLJ (Rep) 320 and the High Court's decision in *Dato' Haji Abdul Malik v. Registrar of Societies, Malaysia* [1989] 1 MLJ 67.

It is to be observed that a literal and *ejusdem generis* construction of O. 53 r. 1A Rules of High Court clearly shows that O. 53 r. 1A Rules of High Court only applies to "*certiorari* to remove any judgment, order, conviction or other proceedings" and a purposive interpretation of O. 53 r. 1A RHC would support the construction that the six-week time period should run from the date of the applicant's receipt of the second decision and not from the date of the second decision; and O. 53 r. 1A RHC confers discretionary power on the judge to extend the time period to make this application and I am of the opinion that the facts of this case justify such an extension of time.

Order 53 r. 1A Rules of the High Court (RHC) reads as follows:

> Leave shall not be granted to apply for an order of *certiorari* to remove any judgment, order, conviction or other proceedings for the purpose of its being quashed, unless the application for leave is made within 6 weeks after the date of the proceeding ... .

The phrase "other proceedings" in O. 53 r. 1A RHC should be interpreted by referring to the *ejusdem generis* rule of interpretation. This is because the preceding words "judgment, order, conviction" in O. 53 r. 1A RHC specifically refer to a category of court orders which are final in effect. As such, the seemingly general words of "other proceedings" in O. 53 r. 1A RHC should not be construed in a general manner but should instead be interpreted *ejusdem generis* by referring to the genus as stated in the specific and preceding words of "judgment, order, conviction" in the same provision. The following cases illustrated the application of the *ejusdem generis* rule of interpretation:

The decision of Hashim Yeop A Sani FJ (as he then was) sitting as a High Court Judge in *Maleb bin Su v. Public Prosecutor*; *Cheak Yoke Thong v. Public Prosecutor* [1984] 1 CLJ 378; ([1984] 2 CLJ (Rep) 232) at p. 378 (p. 233) where he said:

> First, the question of the right to appeal. Under section 307(i) of the Criminal Procedure Code any person dissatisfied with any judgment, sentence or order pronounced by the Magistrate in a criminal case may appeal to the High Court against any such judgment, sentence or order. There is no argument, in my opinion, that the *ejusdem generis* rule applies to the "order" which is preceded by the words "judgment" and "sentence". The order must therefore be a final order in the sense that it is final in effect as in the case of a judgment or a sentence. The test for determining the finality of an order is to see whether the judgment or order finally disposes of the rights of the parties.

The decision of Eusoff Chin J in the High Court (as he then was) in *PP v. Pengurus Hong Trading & Co* [1985] 1 MLJ 366, at p. 367C-F (left), p. 367CF (right) and p. 368A-D (left):

> Regulation 3 of the Regulations states:
>
> 3. The following shall be the definitions of and the standards of strength, weight, quality or quantity, as the case may be, of the foods and drugs specified in this Regulation or of any ingredients or component parts thereof:
>
> (v) TEA:
>
> (i) Tea shall be the leaves and leaf-buds of various species of Tea, prepared by the usual trade processes.
>
> (ii) Tea shall yield not more than seven parts per centum nor less than four parts per centum of ash, of which at least one-half shall be soluble in water. It shall yield at least thirty parts per centum of water-extract. It shall not contain spurious, or exhausted, or decayed, or mouldy leaves or stalks, or any Prussian blue, or lead, or any compound of lead or other matter for facing or for any other purpose.

If it is the intention of the law that tea should not contain any colouring matter, it should say so clearly, such as for example under the definition of 'vinegar' which is to be found under reg. 3(w)(iii), where it clearly says, "It shall not contain any foreign substance or colouring matter except caramel."

I am further of the view that the words 'other matter' found in reg. 3(v)(ii) of the regulation should be read *ejusdem generis* with "Prussian blue, lead or compounds of lead" which according to the deputy public prosecutor are poisonous or deleterious to the human body. According to a well established rule of construction of statutes, general terms following particular ones apply

only to such persons or things as are *ejusdem generis* with those comprehended in the language of the legislature. In other words the general expression is to be read as comprehending things of the same kind as that designated by the preceding particular expressions, unless there is something to show that a wider sense was intended.

In *Re Clark*, the Court of Appeal had to interpret the words "or otherwise" found in s. 3 of the Married Women's Property Act 1882 which stated:

> 3. Any money or other estate of the wife lent or entrusted by her to her husband for the purpose of any trade or business carried on by him or otherwise, shall be treated as assets of her husband's estate in case of his bankruptcy, under reservation of the wife's claim to a dividend as a creditor for the amount or value of such money or other estate after, but not before, all claims of the other creditors of the husband for valuable consideration in money for money's worth have been satisfied.

It was submitted to the court that the words "or otherwise" enlarged the preceding words "for the purpose of any trade, or business carried on by him", and the true construction of the section was that where money was lent or entrusted by a wife that where money was lent or entrusted by a wife to her husband for any purpose the wife could not prove in competition with the other creditors of the husband. The Court of Appeal rejected that argument and held that the section did not apply to a loan by a wife to her husband for purposes unconnected with his trade or business. Vaughan Williams LJ in that case said:

> The construction which we are today placing upon this section is, in my opinion a construction which we ought to arrive at by applying the ordinary cannons of construction. The rule that, where there are general words following particular and specific words all of one genus, the general words are presumed to be restricted to the same genus as the particular words, is a familiar rule of construction. In my judgment, that familiar rule is based upon a principle which applies to the section now before us. In this section there is a specific proposition followed by the general words "or otherwise". Now it seems to me that, just as where there are general words following particular words, the general words are presumed to be restricted to the same genus as the particular words; so where there is a specific proposition followed by general words, the general words ought to be presumed, unless there are some words which led to a contrary conclusion, to be restricted to the matter that is covered by the specific proposition. The fact is that general words in a section of this sort can hardly avoid being ancillary in their nature. When one looks at a clause like this it is quite plain that the words "or otherwise" are ancillary to the specific proposition which precedes them, and it seems to me that where there are ancillary words of that sort it is a

> sound and wholesome rule not to give such a construction to the ancillary words as will wipe out or do away with the specific proposition with which the clause commences.

Therefore applying the *edjusdem generis* rule of construction the phrase "other proceedings" in O. 53 r. 1A RHC should only mean court proceedings which are final in effect and not administrative decisions. Accordingly, O. 53 r. 1A RHC does not apply to the first and second decisions in this case which do not concern court proceedings. A literal reading of O. 53 r. 1A RHC also does not support the application of O. 53 r. 1A RHC in this case. The following authorities clearly show that the term "proceedings" refer to "court proceedings" and not to administrative proceedings or administrative decisions:

Lord Simon of Glaisdale in the House of Lords in *Herbert Berry Associates Ltd v. Inland Revenue Commissioners* [1977] 1 WLR 1437, at p. 1446 stated:

> In several cases it seems to have been assumed that a distress falls with the words "... any other action or proceeding ... pending against the company, ... In section 226(b) of the Companies Act 1948. In *In re Bellaglade Ltd* [1977] 1 All ER 319 Oliver J expressed surprise at this. In the instant case counsel for the respondents reserved in the courts below the right to argue before your Lordships that a distress was not a "proceeding" within the meaning of this section. In the event he did not avail himself of the opportunity. In these circumstances it would be inappropriate to express a concluded opinion. But as at present advised I presume to share the surprise of Oliver J. The Companies Act 1948 is a statute dealing with technical matters, and one would expect the words therein to be used in their primary sense as terms of legal art. The primary sense of "action" as a term of legal art is the invocation of the jurisdiction of a court by writ, "proceeding" the invocation of the jurisdiction of a court by process other than writ. Furthermore, "action or proceeding" in section 226(b) must presumably have the same meaning as the same words in section 226(a), where they undoubtedly refer to the invocation of the jurisdiction of a court.

A detailed and lengthy meaning of the term "proceedings" is given by the learned editor of "*The Law Lexicon with Legal Maxims*" (1993), at pp. 1022 - 1023:

> Proceedings. The word "proceedings" ordinarily relates to forms of law, to the modes in which judicial transactions are conducted.
>
> A "proceeding" is defined as the instrument whereby the party injured obtains redress for wrongs committed against him, either in respect to his personal contracts, his person or his property.
>
> A proceeding in a civil action is an act necessary to be done in order to attain a given end. It is a prescribed mode of action for carrying into effect a legal right.

> In its general acceptation, "proceeding" means the form in which actions are to be brought and defended, the manner of intervening in suits, of conducting them, the mode of deciding them, of opposing judgments and of executing. Ordinary proceedings intend the regular and usual mode of carrying on a suit by due course of common law.

In its general acceptation, a proceeding is an act which is done by the authority or direction of the court, express or implied; an act necessary to be done in order to attain a given end; a prescribed more of action for carrying into effect a legal right; performance of an act, wholly distinct from any consideration of an abstract right; the form and manner of conducting judicial business before a court or judicial officer; regular and orderly progress in form of law; including all possible steps in an action, from its commencement to the execution of judgment. (See 26 M 589 (FB); 11 WR 209; 146 IC 653=1933 Rang 292; 1 ALJ 428; 13 1C 175).

The word "proceedings" is a very general one; it is not limited to proceedings other than the civil proceedings, and civil proceedings other than suits. When applied to suits, it may be used to mean the suit as a whole or it may be used, and often is used, to express the separate steps taken in the course of a suit the aggregate of which makes up the suit. (26C.267 (FB)).

I am of the view that the literal rule of interpreting O. 53 r. 1A RHC is therefore not in favour of applying O. 53 r. 1A RHC to administrative decisions which do not involve court proceedings. If the Rules Committee has indeed intended O. 53 r. 1. A RHC to apply to administrative decisions, the rules committee would have clearly and expressly used the term "decisions" in O. 53 r. 1A RHC. It is pertinent to note that the Rules Committee has expressly provided for the use of the term "decision" in O. 56 r. 1(1) RHC, shows that the Rules Committee must have intended to exclude "decisions" from the scope of O. 53 r. 1A RHC.

Indeed, the amendment to O. 53 RHC by the Rules of the High Court (Amendment) 2000 ("Amendment Rules") is significant. The Amendment Rules came into effect on 21 September 2000 and do not strictly apply to this application. The new O. 53 r. 3(6) RHC reads as follows:

> An application for judicial review shall be made promptly and in any event within 40 days from the date when the grounds for the application first arose or when the decision is first communicated to the applicant ... .

It can be seen that the new O. 53 r. 3(6) RHC shows that if the Rules Committee have intended the previous O. 53 r. 1A RHC to apply to administrative decisions, the Rules Committee could have easily and expressly provided as such; and the fact that the previous O. 53 r. 1A RHC did not

apply to administrative decisions, has now been changed by the new O. 53 r. 3(6) RHC. A comparison between the previous O. 53 r. 1A RHC and the position in England also supports this view. Order 53 rr. 1(1), 4(1) and (2) of the English Rules of the Supreme Court before the amendment in 1978 read as follows:

> 14.1 Order 53 rule 1(1) provided:
>
> An application for:
>
> (a) an order of *mandamus*, prohibition or *certiorari*, or
>
> (b) ..., shall be made by way of an application for judicial review ...;
>
> 14.2 Order 53 rule 4(1) provided:
>
> Subject to the provisions of this rule, where in any case the Court considers that there has been undue delay in making an application for judicial review ... the Court may refuse to grant:
>
> (a) leave for the making of the application, or
>
> (b) any relief sought on the application, ...; and
>
> 14.3 Order 53 rule 4(2) provided:
>
> In the case of an application or an order of *certiorari* to remove any judgment, order, conviction or other proceeding for the purpose of quashing it, the relevant period for the purpose of paragraph (1) is three months after the date of the proceeding.

It will be observed that our O. 53 r. 1A RHC is very similar to O. 53 r. 4(2) of the previous RSC. As such, our O. 53 r. 1A RHC, like O. 53 r. 4(2) of the previous RSC, should only apply to "applications for *certiorari* to quash judgment, order, conviction or other proceeding" and not to applications for *certiorari* to quash administrative decisions. As far as I know it is significant to note that there is no English case in respect of O. 53 r. 4(2) of the previous RSC which had applied O. 53 r. 4(2) of the previous RSC to administrative decisions. In 1978, the previous RSC has been amended and O. 53 r. 4(1) of the present RSC ("present RSC") reads as follows:

> An application for leave to apply for judicial review shall be made promptly and in any event within three months from the date when the grounds for the application first arose ... .

I am of the view that a perusal of the language of O. 53 r. 4(1) of the present RSC supports, the construction of our O. 53 r. 1A RHC in that the wording of O. 53 r. 4(1) of the present RSC does not confine the scope of that provision to "applications for *certiorari* to quash judgment, order, conviction

or other proceeding", unlike our O. 53 r. 1A RHC; and the words "in any event" in O. 53 r. 4(1) of the present RSC make it very clear that such a provision on time to file judicial reviews applications should be applied generally.

Likewise such a provision does not apply to this application for *certiorari* to quash administrative decisions. The clear words of O. 53 r. 1A RHC does not apply to this application which also prays for an order of *mandamus* to direct the first respondent to withdraw the revocation of the license of the bus; and any order or relief under s. 25 read with para. 1 of the Schedule to the Courts of Judicature Act 1964 ("CJA"). In this respect, the decision of the Federal Court in *R Rama Chandran v. The Industrial Court of Malaysia* [1997] 1 CLJ 147 is relevant where at p. 166 Eusoff Chin, Chief Justice said:

> In Malaysia, the High Courts are conferred with similar powers by para. 1 of the Schedule to the Courts of Judicature Act 1964 which states:
>
> > Power to issue to any person or authority directions, orders or writs, including writs of the nature of *habeas corpus*, *mandamus*, prohibition, *quo warranto* and *certiorari*, or any others, for the enforcement of the rights conferred by Part II of the Constitution, or any of them, or for any purpose.
>
> The procedure relating to an application for *certiorari* is laid out in O. 53 of the Rules of the High Court.
>
> I cannot find any provision in the Courts of Judicature Act 1964, the Rules of the High Court 1980 or the Act expressly or impliedly prohibiting the High Court from granting any relief as provided for in the Act when quashing an Award of the Industrial Court. The court cannot override an express provision of the law, but there is no express provision in the statute, then the court can exercise its powers in a suitable case. This is precisely the approach taken by the Federal Court in *Zainal Abidin v. Century Hotel* [1982] 1 MLJ 260, where it relied upon para. 6 of the Schedule to found the mareva jurisdiction.
>
> I should go further and consider the provisions of O. 92 r. 4 of the Rules of the High Court 1980 which provides:
>
> > 4. For the removal of doubts, it is hereby declared that nothing in these rules shall be deemed to limit or affect the inherent powers of the High Court to make any order as may be necessary to prevent an abuse of the process of the court.

If the Rules Committee has intended O. 53 r. 1A RHC to apply to applications for *mandamus* and also to applications for relief under s. 25 read with para. 1 of the schedule to the Court of Judicature Act, the Rules Committee would have clearly and expressly provided as such, in particular to the new O. 53 r. 1(1) RHC which clearly states that the new O. 53 "shall govern all

applications seeking relief specified in para. 1 of the Schedule to the [CJA]" (para. 1 of the schedule to the Court of Judicature Act clearly provides for, among others, the order of *mandamus* and *certiorari*).

The Interpretation Acts 1948 and 1967 ("IA") applies to O. 53 RHC according to s. 2(1)(e) IA because RHC is a subsidiary legislation made under the Court of Judicature Act which has been revised under the Revision of Laws Act 1968. Order 53 RHC does not prescribe a time limit to make an application for *certiorari* to quash administrative decisions. Nor does O. 53 RHC provide a time period to file applications for *mandamus* or relief pursuant to para. 1 of the Schedule to the Court of Judicature Act. As such s. 54(2) IA applies in this case. Section 54(2) IA states as follows:

> Where no time is prescribed within which anything shall be done, that thing shall be done with all convenient speed ... .

and it is observed that this application has been filed with all convenient speed and at this *ex parte* stage, the respondent could not have filed any affidavit to the contrary. Also there is no conflict between O. 53 RHC and IA and as such the maxim of statutory interpretation *generalia specialibus non derogant* does not apply to support the submission that O. 53 RHC should be favoured over IA.

The respondent has raised a preliminary objection that this application has been filed out of time and they relied on cases which were decided before the present Federal Court's decision in *R Rama Chandran v. The Industrial Court of Malaysia*. It is pertinent to note that the following rulings were made in *Rama Chandran*'s case. Eusoff Chin CJ stated at p. 167:

> It is clear that the High Courts and the Federal Court have adopted a liberal and progressive approach in *certiorari* proceedings, and I find that where the particular facts of the case warrant it the High Court should endeavour to remedy an injustice when it is brought to its notice rather than deny to an aggrieved party on purely technical and narrow grounds. The High Court should mould the relief in accordance with the demands of justice.

and Edgar Joseph Jr FCJ stated at p. 184:

> On the other hand, having regard to the rapidly developing law in applications for Judicial Review, whenever legally permissible, we must demonstrate a willingness to mould the remedies available to suit the justice of the case.

It is observed that the cases supporting the preliminary objection did not consider the following matters:

(i) the literal meaning of O. 53 r. 1A RHC;

(ii) Order 53 r. 1A RHC was not construed in an *ejusdem generis* manner;

(iii) The comparison between O. 53 r. 1A RHC and the English legal position; and

(iv) The application of s. 54(2) IA.

The following cases relied on by the respondent in support of the preliminary objection may be distinguished as follows:

(a) in *Ravindran v. Malaysian Examination's Council* [1984] 1 MLJ 168 the applicant was already eight days out of time from the date the decision was served on him. As such, the application for judicial review was rightly time-barred; and

(b) in *Dato' Haji Abdul Malek v. Registrar of Societies, Malaysia* [1989] 1 MLJ 67, the decision of the registrar of societies ("ROS") to cancel the registration of the party in question had been officially gazetted and such gazette notification constituted public notice. As such, no question arose as to when the applicant knew about the ROS's decision in the light of the gazette notification of such a decision.

It is also to be noted that the Federal Court that decided *Mersing Omnibus Co Sdn Bhd* was not the highest court in Malaysia at that time. This is because at the time of the appeal to the Federal Court in *Mersing Omnibus Co Sdn Bhd*, a further appeal could still be made to the Privy Council. This is unlike the decision in *R Rama Chandran* which is decided by the highest court in the country. Needless to say, the High Court's decision in *Dato' Haji Abdul Malik* is only a High Court's decision.

In *Mersing Omnibus Co Sdn Bhd v. Minister of Labour and Manpower* [1983] 2 CLJ 7; [1983] CLJ (Rep) 266 the court cited in support the House of Lords' decision in *Griffiths v. Secretary of State for the Environment* [1983] 1 All ER 439. However *Griffiths'* case may be distinguished from this case as follows:

(i) the statutory provision decided in *Griffiths'* case was s. 245(1) of the Town and Country Planning Act 1971 ("TPCA") which reads as follows:

> 245(1) If any person:
>
> (a) is aggrieved by any action on the part of the Secretary of State to which this section applies ... he may, within six weeks from the date on which ... the action is taken ... make an application to the High Court ... .

(ii) *Griffiths'* case did not interpret the previous O. 53 of English Rules of the Supreme Court;

(iii) In *Griffiths'* case, the appellant applied for planning permission to erect a farmhouse which was rejected by the relevant local authority (p. 444B-C of *Griffiths'* case). The appellant then appealed to the Secretary of State for the Environment ("SSE") who rejected the appeal by way of a letter dated 8 December 1980 ("SSE's decision") which was only received by the appellant on 13 December 1980. The appellant applied to court against SSE's decision ("appellant's application") but the appellant's application was made after the expiry of the six-week period from 8 December 1980 but was made within six weeks from 13 December 1980. Lord Bridge delivered the majority judgment of the House of Lords (Lord Scarman dissented – pp. 440G-443J of *Griffiths'* case) which was concurred by Lords Fraser, Elwyn-Jones and Brandon (pp. 440D-E and 447H-J of *Griffiths'* case). According to Lord Bridge, the six week period for the appellant's application to be made, commenced from the date the SSE's decision had been "typed, signed and date-stamped" and not the date the SSE's decision was communicated to the appellant (p. 447A-H of *Griffiths'* case). I am of the view that the majority judgment in *Griffiths'* case can be justified by the words "... six weeks from the date on which ... the action is taken" in s. 245(1)(b) TPCA which clearly meant that the six-week limitation period begun from the date of SSE's decision and not the date when the appellant received SSE's decision. It is to be noted that there is no equivalent to s. 245(1)(b) TPCA in Malaysia;

(iv) *Griffiths'* case can also be distinguished on this ground as stated by Lord Bridge (p. 447A-C of *Griffiths'* case):

> It is appropriate ... to test the validity of this conclusion by considering the consequences to which a contrary construction of [s. 245(1)(b) TPCA] would lead. The vital factor to bear in mind is that, when (SSE) makes a decision on a planning appeal ... a multiplicity of parties may be affected. In all planning appeals ... there will at least be the appellant and the local planning authority. But in many cases there will also be the owner or owners of land affected, who may be different persons from the applicant ... and the tenants ... . These parties are entitled to make representations ... . This seems ... to point to the extreme improbability of Parliament having intended that the date when the action is taken for the purposes of s. 245 should be determined by the date on which the notice is given to a multiplicity of parties, which would presumably mean the date when the last necessary notice was given." ("Multiplicity of parties consideration"). In this case, the multiplicity of parties consideration does not arise; and

(v) It is also to be noted that in *Griffiths'* case, SSE's decision only dismissed the appellant's appeal for planning permission. The appellant could always make a new application for planning permission and this was recognised by Lord Bridge (p. 447D of *Griffiths'* case). Unlike *Griffiths'* case, if the applicant in the instant case was time-barred, the consequence to be borne by the applicant in this case are severe.

I think that *Mersing Omnibus Co*'s case should not be followed on the following grounds:

(i) *Mersing Omnibus Co*'s case wrongly relied on *Griffiths'* case when the Federal Court stated as follows:

> It is abundantly clear that the date of the proceedings in the matter before us for the purposes of Order 53 rule 1A is *ex visceribus verborum* the date of the Minister's decision ... . The very point we have taken was considered ... in *Griffiths'* case) ... .

That *Griffiths'* case was based on TPCA which has no equivalent in Malaysia.

(i) The Federal Court in *Mersing Omnibus Co*'s case also stated in p. 88A-F (right) as follows:

> The validity of [the contention of the appellant's counsel] must be tested by considering the consequences to which it would lead. Invariably and *ex necessitate rei* a decision of the Minister under ... the Industrial Relations Act ... affect two or more and perhaps a multiplicity of parties ... it would be virtually impracticable and well nigh impossible to ascertain a settled and agreed date of communication of a decision as this would vary from party to party according to when it received notification of the decision. This would entail attributing different dates of the decision for different persons and *ipso facto* manifest the extreme improbability of the Rules Committee having intended that the date of the proceeding for the purposes of Order 53 rule lA should be determined by the date on which notice is severally given to a multiplicity of parties and thereby providing in effect different periods of time for different parties for the purposes of apply for leave for *certiorari* ... . Such a ground given in *Mersing Omnibus Co*'s case, I think is actually the Multiplicity of Parties Consideration as stated in *Griffiths'* case. Once again, the Multiplicity of Parties Consideration does not arise in this case.

Moreover O. 53 r. 1A RHC should be given a purposive interpretation. This would mean that the six-week time period commenced from the date the applicant received the second decision and hence, this application was made within the time stipulated in O. 53 r. 1A RHC. A purposive construction of O. 53 r. 1A RHC would prevent injustice as the applicant actually received

the second decision. In *Soon Kong Meng & Anor v. Lee Thye & Ors* [1995] 4 CLJ 547, where Peh Swee Chin FCJ stated as follows:

> In our view, words in a statute ought to be construed in a sense in which they best harmonise with the subject of the statute in which also, the object of the statute is to be attained, even though sometimes the said sense is not strictly in accordance with the ordinary general meaning of the words used. The result from this is that any words in a statute, in order for them to accord with the intention of the legislature, could be extended or restricted realistically as the case may be, on their interpretation.
>
> The two points raised respectively in the two Supreme Court cases cited above were decided not strictly in accordance with the general ordinary meaning of the words used in the statute or documents, but construed with the attainment of their object in mind.

Edgar Joseph Jr FCJ in the Federal Court's case of *Lim Phin Khian v. Kho Su Ming* [1996] 1 MLJ 1, at 19A-B stated as follows:

> Accordingly, applying a purposive interpretation to section 17, it is my view that Parliament intended that so long as there is a judgment, order or decision of the High Court, given on or before 23 June 1994, and an appeal against the same has been brought whether on or before or even after such date, it is the Federal Court and not the Court of Appeal which is invested with the jurisdiction to hear and determine the same. This interpretation has the great merit of being simple, clear and uniform and should – subject one qualification which I shall deal with in the final paragraph of this judgment – certainly avoid the sort of manifest injustice to litigants in the position of the present appellant ... It is, therefore, the interpretation which I should adopt.

It is noted that the qualification stated by Edgar Joseph Jr FCJ in *Lim Phin Khian* did not apply in this case, and in the Federal Court's decision in *Boustead Trading (1985) Sdn Bhd v. Arab-Malaysian Merchant Bank Bhd* [1995] 4 CLJ 283, Gopal Sri Ram JCA ruled as follows:

> That the justice of the case should be the overriding consideration is axiomatic. After all, courts exist to do justice according to the law applied to the substantial merits of a particular case. And rules of court and of practice are created to facilitate the attainment of justice, not its obstruction.

I am of the opinion that a purposive interpretation of O. 53 r. 1A RHC is in consonance with the "liberal and progressive approach" as expounded by Eusoff Chin CJ in *Rama Chandran* abovementioned.

The words "delay is accounted for to the satisfaction of the court or judge to whom the application for leave is made" in O. 53 r. 1A RHC confers a discretionary power on me to extend time even if there has been no formal application for extension of time. This is because if the Rules Committee requires a formal application for extension of time to be made before the court

exercises its discretion to extend time, the Rules Committee would have clearly and expressly provided as such. This can be seen from the Amendment Rules, in particular the new O. 53 r. 3(6) RHC which expressly states "... provided that the court may, upon application and ..., extend the period of 40 days". The absence of any requirement of a formal application in O. 53 r. 1A RHC clearly showed that my discretion to extend time is not fettered by the lack of a formal application. It is useful to look at the applicant's application where the applicant additionally prayed in para. 3 of the notice of motion for "any or relief which is just and appropriate". I am of the view that I have a very wide discretion to extend time for the applicant to make this application under the general relief prayer. I am fortified in my view by the decision of the following cases. The Federal Court's decision in *Lim Eng Kay v. Jaafar bin Mohamed Said* [1982] 2 LJ 156, at 160B-G (left) where the Federal Court said:

> The statement of claim, as amended on November 3, 1980 pursuant to the respondent's application by summons-in-chambers contains following paragraphs:
>
> 5. And the plaintiff claims damages for:
>
> (a) loss of earnings;
>
> (b) prospective loss of earnings;
>
> 7. Wherefore the plaintiff claims:
>
> (a) Special Damages amounting to $3,300.00;
>
> (b) General Damages;
>
> (c) Interest at rate of 6% per annum from date of filing of writ to date of realisation;
>
> (d) Costs;
>
> (e) Any other relief which this Honourable Court deem fit to grant.
>
> From these two paragraphs of the statement of claim it is obvious that the respondent's solicitors treated the claim for loss of earnings as falling into two categories – (a) pre-trial loss, which they described it as "loss of earnings" an (b) future loss of earnings, which they referred to as "prospective loss of earnings". But instead of pleading the pre-trial loss of earnings or "loss of earnings" as they described it as an item under special damages, they erroneously pleaded it as an item under general damages. This is purely a technical mistake, which in our view did not in any way affect the substance or prejudice the appellant – see Order 2 (effect of Non-Compliance) of the Rules of the High Court 1980. We cannot see how the respondent should be deprived of his right by a purely technical error on the part of his solicitors,

> who were not up-to-date with this aspect of legal technicalities. In any case prayer (e) in paragraph (7), "Any other relief which this Honourable Court deem fit to grant" must not be treated as a mere ornament to pleadings devoid of any meaning, We think that this prayer and the prayer for "loss of earning" in paragraph 5(a) should entitle the court to make such an assessment.

The Court of Appeal's decision in *Tan Tek Seng v. Suruhanjaya Perkhidmatan Pendidikan & Anor* [1996] 2 CLJ 771, where the Court of Appeal said:

> In this statement of claim, the appellant has also prayed for 'further or other relief as this Honourable Court thinks fit.' In *Lim Eng Kay v. Jaafar bin Mohamed Said* [1982] 2 MLJ 156 at p. 160, a prayer in a statement of claim read 'Any other relief which this Honourable Court deems fit to grant.' Salleh Abas FJ (as he then was) said that this prayer 'must not be treated as a mere ornament to pleadings devoid of any meaning'.
>
> I am of the view that the same may be said of the like prayer in the present case. This court should, in my judgment, award the appellant such relief as is appropriate in the circumstances of the case.
>
> In arriving at this conclusion, I have not overlooked the decision in *Mokhtar v. Arumugam* [1959] MLJ 232 CA, where the following statement of principle from the judgment of Fry J in *Cargill v. Bower* [1978] 10 Ch D 502 at p. 508 was applied:
>
> > You cannot, under a general prayer for further relief, obtain any relief inconsistent with that relief which is expressly asked for.
>
> As it happens, there is, in the present case, no inconsistency between the relief which I propose to award to the appellant and the other relief he has expressly claimed. For that reason, I abstain from deciding this case upon my own view of the wider role which, I belief, courts should play in moulding relief to suit the justice of a particular case, especially in the field of public law.

The Court of Appeal's decision in *Dato' Jaffar bin Mohd Ali & Anor v. Jasatera Berhad & 5 Ors* [2000] 2 CLJ 689, where the Court of Appeal said:

> We therefore allow the appeal and set aside the order of the Judge. However, we agree with Mr. Ngeow that it is not proper, in the circumstances of the present case, to grant an order in terms of the appellant's summons. Accordingly, we decline the relief sought in prayers 1, 2 and 3 of the appellant's summons. This is, however, an appropriate case for the exercise of the powers conferred upon us by s. 69(4) of the Courts of Judicature Act 1964. We therefore act upon the prayer for further or other relief contained in the appellant's summons and grant injunction restraining the respondents from implementing the impugned resolutions passed on December 32, 1998.

The High Court's decision in *Bolton Finance Bhd v. Kenneth James Sanker* [1997] 4 CLJ Supp 99, where the High Court said:

> The plaintiff/appellant has clearly demanded the correct sums. The statement of claim was amended to include the exact sums expended on the receiver and manager amounting to RM83,623.69. Although this sum was not specifically included as an item in the summons in chambers, I hold that this item ought to be allowed as it has been shown to have been expended. This item ought to be allowed under prayer (c) which prays for any other relief as the honorable court deems fit and proper. I am of the view that there is no defence in this case.

It is also to be observed that the specific provision of O. 53 r. 1A RHC should prevail over the general provision of O. 3 r. 5 RHC according to the application of the maxim *generalia specialibus non derogant* which has been applied in the following cases. In *PP v. Chew Siew Luan* [1982] CLJ 354; [1982] CLJ (Rep) 285, Raja Azlan Shah CJ (Malaya) (DYMM as he then was) said:

> The Dangerous Act 1952 (Revised – 1980) is an Act specifically designed to regulate the importation, exportation, manufacture, sale and use of, *inter alia*, dangerous drugs, and "to make special provisions relating to the jurisdiction of courts in respect of offences thereunder and their trial, and for purposes connected therewith". In other words, the Act is in substance a special law passed by Parliament in derogation of the rights of a person concerning the granting of bail in an otherwise ordinary case. We further note in particular that section 41B of the Act is an entirely new section introduced by the Dangerous Drugs (Amendment) Act, 1978 (Act A426) and became operative on 10.2.78. *Generalibus specialia derogant* is a cardinal principle of interpretation. It means that where a special provision is made in a special statute, that special provision excludes the operation of a general provision in the general law. (See also *Public Prosecutor v. Chu Beow Hin*). The provisions of section 3 of the Criminal Procedure Code which counsel for the respondent seeks to rely on has no relevance whatsoever to the matter in issue before us.

In *Luggage Distributors (M) Sdn Bhd v. Tan Hoe Teng @ Tan Tien Chi & Anor* [1995] 3 CLJ 520 at 550B-E where the Court of Appeal said:

> There is another compelling reason for holding that the respondents have no caveatable interest in the land. It lies in the rule of construction expressed in the maxim *generalibus sepcialia derogant*. Where there are two provisions of written law, one general and the other specific, then, whether or not these two provisions are to be found in the same or different statutes, the special or specific provision excludes the operation of the general provision.

Thus in *Commissioner of Income Tax v. Shahzada Nand & Sons* [1966] SC 1342, where (at p. 1347) Subba Rao J, said:

> Another rule of construction which is relevant to the present enquiry is expressed in the *maxim generalia specialibus non derogant*, which means that when there is a conflict between a general and special provision, the latter shall

prevail. The said principle has been stated in *Craies on Statute Law*, 5th Edn., at p. 205 thus:

> The rule is, that whenever there is a particular enactment and a general enactment in the same statute and the latter, taken in its most comprehensive sense, would overrule the former, the particular enactment must be operative, and the general enactment must be taken to affect only the other parts of the statute to which it may properly apply.

See also *Public Prosecutor v. Chew Siew Luan* [1982] CLJ 354; [1982] CLJ (Rep) 285.

I am of the opinion that in the existing state of facts, I am satisfied that a strong case has been established to warrant this court in enlarging the time in respect of this application for the following reasons:

(a) The first respondent did not give the applicant a right of hearing before making the first decision;

(b) The first respondent breached s. 25(1) Commercial Vehicles Licensing Board Act 1987 (Act 334) (CVLBA) when the first decision was made because the first respondent did not consider any of the matters stated in paras (a) to (c) of s. 25(1) CVLBA, and also did not consider any of the matters stated in the proviso to s. 25(1) CVLBA;

(c) The first respondent in making the first decision did not take into account the relevant consideration of the suspension of the bus' license. In other words, the first respondent did not consider that the applicant has already been punished in respect of the bus;

(d) The first decision was "unreasonable" in the Wednesbury sense because the applicant has already been punished in respect of the bus; and

(e) The first and second respondent did not give any reasons for the first and second decisions;

(f) The applicant received the second decision on 21 April 2000 which was only one week after the expiry of the six-week period as stipulated in O. 53 r. 1A RHC; and

(g) There is no prejudice to the respondents if the court is to extend time.

For the above stated reasons the preliminary objection is hereby dismissed with costs and an order in terms of the application is hereby granted.